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COMMITTEE ON THE RIGHTS OF THE CHILD

Eighteenth session

SUMMARY RECORD OF THE 461st MEETING

Held at the Palais des Nations, Geneva,
on Monday, 25 May 1998, at 10 a.m.

Chairperson: Mr. RABAH

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Initial report of Fiji

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES (agenda item 4)

Initial report of Fiji (CRC/C/28/Add.7; HRI/CORE/1/Add.76; CRC/C/Q/FIJ/1; CRC/C/A/FIJ/1; written replies of the Government of Fiji to the questions in the list of issues to be taken up (document without symbol))

1. At the invitation of the Chairman, Mrs. Boladuadua and Mrs. Shafio (Fiji) took places at the Committee table.

2. The CHAIRMAN welcomed the delegation of Fiji and invited it to respond to the requests for information paragraphs 1 to 12 of the list of issues (CRC/C/Q/FIJ/1) (general measures of implementation and definition of the child).

3. Mrs. SHAFIO (Fiji) said that, since 1993, measures had been taken to align the legislation of Fiji with the provisions of the Convention on the Rights of the Child. That was the reason for the setting up of the Commission of Inquiry into the Courts System, which had submitted to the Law Reform Commission recommendations concerning arrangements for the appearance of children in court and the weight to be given to their testimony. Although the implementation of those recommendations was proceeding very slowly, particularly with regard to the recording of depositions by children, the use of video and the need for corroboration of statements, progress had been made in the protection of children (the installation of courtroom screening and the holding of sessions in camera) and in respecting the views of children. The Law Reform Commission was currently considering the recommendations made by the Family Courts Committee which should lead to changes in the law by 1998. A Children's Unit had been established within the Department of Social Welfare to receive complaints of sexual abuse, to follow up cases of mistreatment of children and to provide advisory services. The Police Department had set up in Suva a child mistreatment unit, equipped with a medical examination room, which was financed by UNICEF, the Red Cross and other organizations. Since its establishment, the Unit had recorded an increasing number of complaints. Similar units had been opened in other districts. In recent years, the Coordinating Committee on Children had succeeded in implementing many provisions of the Convention, although it was allocated no funds because of budgetary constraints. The projects were financed by the various ministries concerned.

4. Mrs. BOLADUADUA (Fiji) said that the health services were maintained mainly by the public sector and the health budget accounted for 9 per cent of public expenditure. The infant mortality rate was below 20 per 1,000 live births and the mortality rate for children below the age of five years was 33 per thousand. Since the ratification of the Convention, the authorities had improved the child vaccination programme (95 per cent of children were at present vaccinated) and had modernized health facilities in rural areas. They had also sought to train health personnel in order to reduce the main causes of child morbidity: diarrhoea and respiratory illnesses.

5. Mrs. SHAFIQ (Fiji) said that corporal punishment had always been a common practice in schools. However, teachers responsible for violence against children had recently been brought before the courts. The Government was currently considering a draft recommendation of the Legal Sub-Committee of the Coordinating Committee on Children which called for the prohibition of corporal punishment. The Department of Social Welfare and the Police Department had signed a memorandum of agreement in which the latter had undertaken to inform the former of all cases involving children. Statistics on ill-treatment of children had to be recorded in a uniform manner by all the departments and communicated to the Coordinating Committee on Children.

6. Mrs. PALME requested particulars of the planned legislation concerning corporal punishment. She also wished to know how the authorities planned to finance their projects for assistance to children, including health measures, having regard to the economic situation.

7. Mrs. KARP said that she would like to know more about the Coordinating Committee on Children. What were its budget, its powers, its method of functioning, its activities and its recommendations. Since the Convention, as such, had not been incorporated into the internal law of Fiji, she asked the delegation to provide information on the plans for alignment of Fiji's legislation with the Convention. What was the situation regarding the recommendations of the Commission of Inquiry into the Courts System?

8. Since budgetary constraints appeared to be delaying the implementation of the Convention, she wondered whether, instead of awaiting the availability of the necessary resources for a wholesale reform of the legislation, it would not be wiser to proceed by stages. Why did the bill providing for the establishment of a Fijian Commission on Human Rights not mention the Human Rights Committee or the Committee on the Rights of the Child?

9. She drew the attention of the Committee to the risks involved in the plan to combine the Family Court and the Juvenile Court. In view of the holistic nature of individual rights, she asked whether the Government planned to ratify the other human rights instruments, including the International Covenant on Civil and Political Rights.

10. The meeting was suspended at 10.42 a.m. and resumed at 10.50 a.m.

11. Mrs. SHAFIQ (Fiji) said it was generally recognized that parents and teachers could inflict punishment on children. However, the Coordinating Committee on Children had submitted to the Government a report recommending the prohibition of corporal punishment and the Law Reform Commission was also considering the amendments to the Code of Criminal Procedure that would be required for the abolition of such punishment and its replacement by other disciplinary measures. A programme to make parents and teachers aware of the rights of children and of the Convention as a whole had been launched by religious organizations and other community groups in an attempt to change mentalities.

12. Mrs. BOLADUADUA (Fiji) said that her country had received UNICEF assistance for the implementation of a child vaccination programme. Such programmes would in future be financed by the Government, which was now giving budgetary priority to the social and health sectors.

13. Mrs. SHAFIQ (Fiji) said that the Coordinating Committee on Children was a multisectoral Committee composed of representatives of Government organs and non-governmental organizations. An advisory and supervisory body, established by the Cabinet, it was responsible for considering matters relating to children and for monitoring the implementation of the Convention. It did not have a budget separate from that of the Government and it had no permanent staff. The Central Planning Office acted as the secretariat of the Committee.

14. Referring to measures taken to align the legislation of Fiji with the provisions of the Convention, she said that relevant work was in progress as part of the legislative reforms, especially in the areas of family law, criminal law and offences against children. The Beattie Commission had recommended that the family courts should hear all cases involving children and young people, including delinquency cases. The Family Court would then be sitting as a juvenile court. The law did not define the minimum age for giving evidence. However, under article 10 of the Juveniles Act, a child could make depositions under oath if he understood the nature of the oath. If that was not the case, but he was sufficiently aware to understand that he had to tell the truth, his statement was admissible but required corroboration. Corroboration was recommended but was not mandatory, for many prosecutions had had to be abandoned because of the provision.

15. Mr. FULCI commended the secretariat for the quality of its country analysis (CRC/C/A/FIJ/1) which drew a distinction between the information received from the State party and that from other sources. He asked the delegation of Fiji to provide information on the role which NGOs, parliamentary committees and other bodies had played in the preparation of the initial report. He understood that there had been a protest from the NGO Coalition (the Coalition of the NGOs in Fiji) alleging that the NGOs had not been consulted and that the bulk of the funds allocated for preparation of the report had been diverted to the benefit of consultants or officials. It was also alleged that little attempt was made to disseminate the Convention among children and teachers. It would be useful to learn what measures the Government of Fiji had taken to translate the text into the minority languages and what was the status of the Convention in relation to domestic law?

16. Mr. KOLOSOV asked whether the University of Fiji, the only one in Oceania, made any efforts to publicize the Convention.

17. Mrs. KARP asked what had been the results of the study carried out in Fiji on the problems of children and the implementation of the recommendations of the Coordinating Committee on Children. In that connection, she wished to know how that Committee was able to carry out its independent monitoring task without a budget of its own. She also wished to know whether the testimony of children was always recorded on video tape or heard in camera.

18. Mrs. SHAFIQ (Fiji) said that NGOs had participated in the preparation of the report and were represented in the four sub-committees of the Coordinating Committee on Children. The Convention had been translated into the local dialects, Fijian and Hindi. UNICEF had helped in drawing up a simplified version of the Convention which had been included in the primary and secondary school syllabuses. The Coordinating Committee on Children had been established precisely in order to consider how Fiji could incorporate the Convention's provisions in its laws and regulations. While the Convention had not yet been incorporated into domestic law and its provisions could not always be invoked in the courts, the necessary reform was well under way.

19. Mrs. BOLADUADUA (Fiji) confirmed that NGOs had participated in the preparation of the report. Referring to Mrs. Karp's statement, she said that a nutrition survey carried out in 1993 had highlighted the anaemia and malnutrition problems from which children suffered. She rejected the suggestion that there had been misappropriation of funds intended for the preparation of the report.

20. Mrs. SHAFIQ (Fiji) said that the Coordinating Committee on Children could carry out monitoring work. However, it reported to the Development Sub-Committee and to the Intergovernmental Committee for Development which itself reported to the Cabinet. That was the reason why it was necessary to establish a completely independent body and she thanked the members of the Committee for having suggested that that be recommended. Referring to the question of the ratification by Fiji of other human rights instruments, she said that the Law Reform Commission was aware of the need for ratification of certain human rights instruments dealing with such matters as the prohibition of corporal punishment. However, only very slow progress was being made in that area. While the Commission on Human Rights was referred to in the Bill providing for amendment of the Constitution, the Human Rights Committee was not. She believed that such a reference had not been recommended, but she promised to give closer consideration to that question upon her return to Fiji.

21. With regard to the use of video equipment and screening in the courts, she said that they were at present used only in cases involving sexual abuse of children.

22. The University of Fiji was attended by students from throughout the South Pacific and the University's law courses included courses on the rights of the child and the Convention on the Rights of the Child. Seminars on that topic were held and television and radio programmes for children were produced.

23. The CHAIRMAN asked whether there was any discrimination against children belonging to minorities, whether training programmes on the implementation of the Convention were held for the professional groups concerned, including judges, social welfare workers and members of the police force, and whether there was a parliamentary committee on questions relating to the rights of the child.

24. Mrs. SHAFIQ (Fiji) said that she knew of no case of discrimination against children on the ground of their belonging to a minority group. The Constitution granted equality of rights to all members of ethnic groups in Fiji. The training provided for judges, procurators, police personnel and all those who worked in the field of juvenile justice had been improved in the last two years, thanks to assistance furnished by UNICEF, UNDP, the Coordinating Committee on Children and the United Kingdom mission. There was no parliamentary committee with responsibility for considering matters relating to children.

25. Mr. FULCI referred to the report of the United States Department of State on human rights practices, which indicated that Fiji had undertaken to observe human rights but that the financial resources available to it for honouring its commitments were limited. He would like the delegation to indicate the amount of the financial aid furnished under international cooperation programmes that was devoted to the protection and welfare of children. He also wished to know how that aid was distributed.

26. Mrs. KARP said that she still did not know why the legislative process was so slow in incorporating the Convention into Fiji's legislation, in aligning domestic law with the provisions of the Convention and in implementing the recommendations of the Coordinating Committee. Regarding the bill to amend the Constitution, she still considered that the provision listing the functions of the Commission on Human Rights should make reference to the Committee on the Rights of the Child in the same way as it did to the Committee on Human Rights and the Committee for the Elimination of Racial Discrimination, so as to indicate clearly that the rights of the child were an integral part of the set of provisions relating to human rights.

27. Mrs. BOLADUADUA (Fiji) said she was unable to indicate what proportion of international aid was devoted to matters relating to children because no sum was identified as such in the budget. However, a large part of the funds allocated for health purposes came at present from UNICEF, WHO and bilateral sources.

28. Mrs. SHAFIQ (Fiji) said that a lack of human resources was the main cause of the slowness of the legislative process. The Law Reform Commission had had to recruit four commissioners to draw up the amendments to Fiji's legislation that were necessary to align it with the provisions of the Convention. Those amendments had been placed before the Parliament and should be adopted shortly.

29. She recognized that the existence of a parliamentary committee responsible for matters relating to children would have accelerated the legislative process. That question was moreover to be considered by the Coordinating Committee. She took note of the proposal to mention the Committee on the Rights of the Child in the bill to amend the Constitution.

30. The CHAIRMAN invited members of the Committee to ask questions and to make comments on the part of the report relating to the definition of the child (article 1 of the Convention).

31. Mrs. PALME noted that the Law Reform Commission had recommended that the minimum age for marriage should be set at 18 years for both sexes. Did that mean that the authorities of Fiji intended to ensure equality between men and women? She also noted that Fiji had not ratified ILO Convention No. 138 and she asked the delegation whether the Fijian authorities planned to ratify that instrument. She drew attention to the fact that a new Convention on forced child labour was being prepared and should be ready in 1999. That new Convention would also deal with the question of the age at which children could commence work.

32. Mrs. KARP expressed concern at the fact that children aged 17 years did not benefit from the special protection provided by the juvenile justice system. In the light of article 1 of the Convention, she wondered why the Fijian authorities had decided to set the age of majority at 17 years in that area. Furthermore, the age of criminal responsibility had been set at 10 years. A child of that age was always considered to be very young even in a special system of juvenile justice. She wished to know whether the Coordination Committee had recommended raising the age of criminal responsibility. She welcomed the recommendation to abolish the rule under which evidence provided by minors always had to be corroborated.

33. The CHAIRMAN noted that Fiji's labour legislation set the minimum age for entry into employment. It defined "the child", as any person under the age of 15 years and it prohibited work by children under the age of 12 years. He wondered whether the minimum age should not be raised and whether there was any discrimination as between girls and boys in such matters as working hours and the types of work in which they could engage.

34. Mr. FULCI asked whether Fiji had any legislative provisions providing for protection of children against economic exploitation.

35. Mr. KOLOSOV requested information concerning the method of registering births. How did the Fijian authorities guarantee the accuracy of the age shown on birth certificates?

36. Mrs. SHAFIQ (Fiji) agreed that the number of definitions of the term "child" to be found in Fiji's legislation might give rise to confusion. As the report indicated, each law had its own definition. This was a question which would have to be studied. She recognized that the age of criminal responsibility was not high enough and she informed the Committee that the Law Reform Commission was currently examining a proposal to modify that age. Regarding child labour, there was at present no recommendation to change the ages prescribed in the Employment Act. Article 59 protected children between the ages of 12 and 15 years against excessive working hours, night work and hard or arduous work. Under article 60 a child between the ages of 12 and 15 years could be engaged for work on a daily basis provided he could return to the home of his parents or his guardian every evening and was not required to work more than six hours per day (art. 64). Fiji had not ratified ILO Convention No. 138 and had not considered the question of the economic exploitation of children, because that problem had not really arisen in the country. She thought that a study group should consider the question more closely in order to determine whether a problem existed and to recommend appropriate measures if it did.

37. Mrs. BOLADUADUA (Fiji) described the system for registering births in Fiji and pointed out that in cases where the parents did not report the birth of a child to the civil registrar, verification could be undertaken at the Ministry of Health, where a record was made of all births that took place in hospital, which was 95 per cent of the births in Fiji.

38. Mr. KOLOSOV asked whether births were registered in the same way on the remote islands.

39. Mrs. BOLADUADUA (Fiji) said that the authorities endeavoured to send nurses to most of the remote islands and they had responsibility for registering births.

40. Mrs. KARP said that the question of child labour had perhaps given rise to no problems in the past but the economic situation could be expected to alter and problems might arise in the future. The authorities of Fiji should consider the possibility of adopting legislation in that field that would prohibit child labour during school hours, for example.

41. She asked at what age a minor could consent to sexual relations, at what age a child could seek medical treatment without the consent of his parents and how such consent should be expressed.

42. The CHAIRMAN noted that the law did not define the age from which a child could give evidence in court. She wished to know whether there had been any cases where courts had heard testimony from very young children.

43. Mrs. SHAFIQ (Fiji) replied that she had heard of several cases where 10-year-old children had given evidence. There was also a recent case where the deponent had been only 8 years of age. There was nothing to prevent a child giving evidence provided he understood what an oath was and the reason why he was before the court.

44. There was no provision of the law that prohibited child labour during school hours. It was the responsibility of parents to ensure that their children went to school.

45. She shared the Committee's view that a 17-year-old minor should not be treated as an adult. That was one of the changes in the law currently being considered in Fiji.

46. Mrs. BOLADUADUA (Fiji) said that the law did not specify the age below which children had to obtain their parent's consent in order to obtain medical care. In the case of a problem occurring at school, the head teacher had to obtain the consent of the parents before any necessary medical treatment was given to their child.

47. Mr. KOLOSOV asked what was the minimum age a minor had to be for sexual relations that an adult had with him not to constitute an offence.

48. Mrs. KARP said it was desirable that children and adolescents who did not attend school should have the benefit of special services that would

enable them to consult doctors without the consent of their parents on such matters as detection of AIDS or drug addiction. Alternatively, consideration should be given to bringing the age of consent below 18 years.

49. Mrs. SHAFIQ (Fiji) said that the legal age of consent to sexual relations was 16 years. Sexual relations which an adult had with a consenting minor were an offence known as "defilement", which was punishable with a more severe penalty if the minor was below the age of 13 years. It had been recommended that even heavier penalties should be imposed if the minor was between 8 and 10 years of age or was below 8 years of age. Furthermore, the definition of rape was at present limited to penetration of the vagina by the penis. All other forms of penetration were treated as indecent assault, which entailed a less heavy penalty than rape. It had been recommended that the law in this respect should be amended.

50. Mrs. KARP noted that boys were increasingly suffering exploitation and sexual abuse and she asked whether repressive measures were taken in respect of offences committed against boys in the same way as against girls.

51. Mrs. SHAFIQ recognized that the only provision of the criminal code that applied expressly to persons of the male sex was entitled "indecent practices between males". It had been recommended that the scope of this provision should be expanded to cover minors of the male sex.

52. Regarding ILO Convention No. 138, she did not believe that Fiji was currently planning to ratify that instrument, but she would not fail to recommend its ratification on her return to Fiji.

53. Mrs. PALME noted that the Fijian delegation regretted that handicapped children did not benefit from teaching that was adapted to their needs. It was very important to integrate handicapped children into the regular school system as far as possible. She asked what action the Government of Fiji was taking on the matter. She would also like to know whether there was discrimination against children born out of wedlock.

54. Mrs. KARP said she was concerned at the discrimination that might be suffered by three categories of children: girl children, handicapped children and children born out of wedlock. She was also concerned about the fate of children who had contracted AIDS and wished to know how they were treated and what was done to inform the public about their condition.

55. With regard to respect for the views of children, the Convention painted a new portrait of the child, treating him as an autonomous individual who had his own voice in the home, at school and in public life in general. She wondered about the contrast between the Convention's outlook and the case of certain cultural norms governing the behaviour of children and whether, for example, children could express their views spontaneously to an adult. What was being done to strengthen the participation of children in all areas of life, including schooling? Fiji's school councils appeared to be appointed or administered by the head teachers. To what extent could children elect their own representatives to such councils?

The meeting was suspended at 12.30 p.m. and resumed at 12.35 p.m.

56. Mrs. BOLADUADUA (Fiji) said that there was no legislation concerning any grounds for discrimination against children infected with HIV/AIDS. The general directives that had been issued concerning transmissible diseases concerned all population groups. Only two children had so far been infected.

57. Improvement of the situation of children born out of wedlock was one of the principal objectives of the current reform of family law. The cultural practices which continued to place emphasis on the authority of males tended to perpetuate the existing differences between boys and girls. However, that phenomenon could be said to be gradually disappearing as greater knowledge was gained of the rights of children. The principal problem affecting handicapped children was the lack of special infrastructures for them. Handicaps were identified by a network of rural clinics which directed the children concerned to specialized schools.

58. Mrs. SHAFIQ (Fiji) said that children born out of wedlock were still treated as illegitimate under the existing legislation, but efforts were being made to eliminate the concept of illegitimacy from family law.

59. There was no cultural encouragement of participation by children at school. The tradition was that respect should be shown for adults and the elderly and that children should not express their views publicly. In liaison with religious organizations and parent/teacher associations, attempts were being made to introduce into the school system practices involving expression of views that were the norm in other countries. The cultural resistance was such, however, that such a change would take considerable time. It was true that many of the school councils were influenced by teachers or the school management, but some councils had been established independently by pupils. However, before the latter could freely express their views, traditional behaviour towards parents and the elderly would have to change.

60. Mrs. PALME asked whether there was any discrimination against children born out of wedlock in the area of inheritance.

61. Mrs. SHAFIQ (Fiji) said she believed that if there was any discrimination against children born out of wedlock, it was more in the area of religion than in that of inheritance. As far as legislation was concerned, the only discriminatory provision that remained was the one providing for such children to be treated as illegitimate. However, that practice was dying out. Religion was one of the pillars of Fijian society and it was from the church that a child born out of wedlock was liable to encounter rejection or subtle discrimination, as the parents of such a child could not join fully in the activities of a religious organization.

62. There was a mosaic of different religions throughout the country and the Christian faith was only that of the majority. The Coordinating Committee on Children did not comprise any religious organizations in its membership, but it was endeavouring to have more contacts with them for it realized that they played a very important role in society. It was mainly through the churches that the change in mentality and in behaviour towards children would come that the authorities were seeking to encourage.

63. The CHAIRMAN asked the delegation of Fiji to furnish some specific examples of the way in which the best interests of the child were respected.

64. Mrs. SHAFIQ (Fiji) said that it was primarily in family law that attention was paid to the concept of the best interest of the child, particularly in the area of custody and guardianship of children whose parents had separated. Care was taken to respect the wishes of the child, who was helped by counsel in all procedures involving placement of the child in the custody of one of the parents. The assistance of children by counsel was mandatory in all judicial proceedings under family law. The Department of Social Welfare had a specialized unit for social assistance to children and it had the right to remove a child from the custody of its parents if it considered the child to be in danger. The child could then be placed provisionally in an institution or in another family until a judicial organ took a definitive decision concerning him.

65. Mr. KOLOSOV noted from paragraph 79 of the report (CRC/C/28/Add.7) that, if a child's father was not an indigenous Fijian, the child had no assurance of retaining his right to inheritance of the father's property. This appeared to conflict with what had been stated concerning the absence of discrimination in matters of inheritance.

66. Mrs. SHAFIQ (Fiji) said that the reference in paragraph 79 was to a very special case of transmission by inheritance of indigenous land that constituted community property. That right of inheritance could be lost if the father was not an indigenous Fijian. However, as far as she was aware, no case of that kind had been reported. In any event, the child retained its rights to land through the family of its mother.

The meeting rose at 1 p.m.